

Local Government Reform Proposal

Submission

February 2022

About WALGA

The WA Local Government Association (WALGA) is working for Local Government in Western Australia. As the peak industry body, WALGA advocates on behalf of 139 Western Australian Local Governments. As the united voice of Local Government in Western Australia, WALGA is an independent, membership-based organization representing and supporting the work and interests of Local Governments in Western Australia. WALGA provides an essential voice for 1,215 Elected Members, approximately 22,000 Local Government employees (16,500 Full Time Equivalents) as well as over 2.5 million constituents of Local Governments in Western Australia.

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Local Government Act Review Process

WALGA, through consultation with the Local Government Sector, endorsed sector advocacy positions relating to Local Government Act amendments in March 2019 and December 2020. These advocacy positions were developed considering (but not limited to):

- The Department of Local Government, Sport and Cultural Industries (DLGSC) consultation on Act Reform (2017-2020)
- The City of Perth Inquiry Report (mid 2020)
- The State Parliament's Select Committee Report into Local Government (late 2020)

In December 2020, WALGA endorsed the following principles for any review of the Local Government Act:

Local Government Reform – WALGA Principles

That the following key principles be embodied in the Local Government Act:

1. Uphold the general competence principle currently embodied in the Local Government Act
2. Provide for a flexible, principles-based legislative framework
3. Promote a size and scale compliance regime
4. Promote enabling legislation that empowers Local Government to carry out activities beneficial to its community taking into consideration Local Governments' role in creating a sustainable and resilient community through:
 - a. Economic development
 - b. Environmental protection, and
 - c. Social advancement
5. Avoid red tape and 'de-clutter' the extensive regulatory regime that underpins the Local Government Act, and
6. The State Government must not assign legislative responsibilities to Local Governments unless there is provision for resources required to fulfil the responsibilities.

It is worth noting that of the above principles, items 1, 2 and 3 are addressed in these legislative reform proposals and principles 4 and 5 are partially addressed.

Local Government Response

WALGA released the Local Government Reform Proposals – Summary of Proposed Reforms Discussion Paper on 24 November 2021, calling for a response by 28 January 2022.

This document is based on submissions made by 65 respondent Local Governments. The overall response indicates majority support for many of the proposed reforms, most commonly where reforms align with current sector advocacy positions.

Key Issues

The submissions included strong commentary on the following proposed reforms that are of concern:

Item 6.6 Audit Committees

The proposed reform to require a majority of independent members on Audit Committees, and mandate that the Audit Committee chair be an independent person, was strongly challenged. A fundamental purpose of an Audit Committee is to provide the vehicle for governance of a Local Government's affairs, and this links directly with the role of Council under Section 2.7(1)(a) of the *Local Government Act* ('the Act'). For this

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reason, the sector supports a Council Member majority on Audit Committees and acknowledges the role of the Office of the Auditor General as the independent auditor of Local Governments. The sector confirmed that appointing independent members to Audit Committees is supported and practiced, and that Audit Committees can elect an independent member as Chair under provisions of s.5.12 of the Act. The sector supports the concept of shared regional Audit Committees on proviso there be a majority of Council Members, and the payment of meetings fees or defined reimbursements to independent Audit Committee members be legislatively authorised.

Item 4.3 Introduction of Preferential Voting

The sector remains in favour of the first past the post method of vote counting. Risk of the infiltration of party politics, and that preference swapping leading to alliances amongst candidates has potential for factionalisation of Councils, were pre-eminent in the response. 'First past the post' voting remains favoured on the grounds of its simplicity, efficiency, ease of voter understanding, transparency and candidates campaigning based on the merits of the individual. However, if 'first past the post' is not retained, then optional preferential voting is preferred.

Item 4.4 Public Vote to Elect Mayor or President of Band 1 and 2 Local Governments

Retaining the discretion to choose between popularly-elected Mayors and Presidents of Band 1 and 2 Local Governments remains the favoured option. Respondents queried the lack of detailed benefit of the proposal to enshrine one system of election over another, commenting that the alternate method of election provided under s.2.11 and s.2.12 of the Act permits both a Local Government and electors of the district to exercise agency for change.

Item 4.5 Tiered Limits on the Number of Councillors

There is broad support for WALGA's proposed option that Local Governments with populations up to 5,000 be represented by between 5 and 7 Council Members. The remaining categories of representation are supported.

Item 3.5 Chief Executive Officer Key Performance Indicators

There is support for the reporting of CEO KPIs that reflect the strategic direction and operational function of the Local Government, to the exclusion of reporting KPIs of a confidential nature (i.e. workplace or risk-based matters). There is also support for the exclusion of reporting performance review results which is regarded as a private matter between employer and employee, to be maintained as a confidential record of the Local Government.

The following provides a detailed response to each legislative reform proposal.

Theme 1: Early Intervention, Effective Regulation and Stronger Penalties

| PROPOSED REFORMS | WALGA COMMENTS & RECOMMENDATIONS |
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| <p>1.1 Early Intervention Powers</p> | |
| <ul style="list-style-type: none"> It is proposed to establish a Chief Inspector of Local Government (the Inspector), supported by an Office of the Local Government Inspector (the Inspectorate). The Inspector would receive minor and serious complaints about elected members. The Inspector would oversee complaints relating to local government CEOs. Local Governments would still be responsible for dealing with minor behavioural complaints. The Inspector would have powers of a standing inquiry, able to investigate and intervene in any local government where potential issues are identified. The Inspector would have the authority to assess, triage, refer, investigate, or close complaints, having regard to various public interest criteria – considering laws such as the <i>Corruption, Crime and Misconduct Act 2003</i>, the <i>Occupational Safety and Health Act 1984</i>, the <i>Building Act 2011</i>, and other legislation. The Inspector would have powers to implement minor penalties for less serious breaches of the Act, with an appeal mechanism. The Inspector would also have the power to order a local government to address non-compliance with the Act or Regulations. The Inspector would be supported by a panel of Local Government Monitors (see item 1.2). The existing Local Government Standards Panel would be replaced with a new Conduct Panel (see item 1.3). Penalties for breaches to the Local Government Act and Regulations will be reviewed and are proposed to be generally strengthened (see item 1.4). These reforms would be supported by new powers to more quickly resolve issues within local government (see items 1.5 and 1.6). | <p>Current Local Government Position Items 1.1, 1.2 and 1.3 generally align with WALGA Advocacy Position 2.6.8 - ‘Establish Office of Independent Assessor’</p> <p><i>The Local Government sector supports:</i></p> <ol style="list-style-type: none"> <i>Establishing an Office of the Independent Assessor to replace the Standards Panel to provide an independent body to receive, investigate and assess complaints against Elected Members and undertake inquiries.</i> <i>Remove the CEO from being involved in processing complaints.</i> <i>That an early intervention framework of monitoring to support Local Governments be provided with any associated costs to be the responsibility of the State Government.</i> <i>An external oversight model for local level behavioural complaints made under Council Member, Committee Member and Candidate Codes of Conduct, that is closely aligned to the Victorian Councillor Complaints Framework.</i> <p>Comment The Local Government sector is in favour of early intervention and a swift response to potentially disruptive or dysfunctional behaviours. The Proposed Reforms state ‘<i>Local Governments would still be responsible for dealing with minor behavioural complaints</i>’ and therefore do not go as far as the Sector’s recent request for an external oversight model for the independent assessment of local level complaints (State Council Res: 264.5/2021 – September 2021). However this will be mitigated with the Inspector able to respond to a Local Government having unresolved matters by appointing a monitor to assist the Local Government.</p> <p>It is expected the Local Government Inspectorate would be funded by the State Government, however it is noted that the cost of the Local Government Monitors and the Conduct Panel would be borne by the Local Government concerned.</p> |

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| | <p><u>Recommendation – Items 1.1 to 1.3</u></p> <ol style="list-style-type: none"> 1. Support the proposed reforms as they align with the sectors position on external oversight and support. 2. Request the Minister to explore alternate mechanisms for resolving local level complaints. |
| <p>1.2 Local Government Monitors</p> | |
| <ul style="list-style-type: none"> • A panel of Local Government Monitors would be established. • Monitors could be appointed by the Inspector to go into a local government and try to resolve problems. • The purpose of Monitors would be to proactively fix problems, rather than to identify blame or collect evidence. • Monitors would be qualified specialists, such as: <ul style="list-style-type: none"> ○ Experienced and respected former Mayors, Presidents, and CEOs - to act as mentors and facilitators ○ Dispute resolution experts - to address the breakdown of professional working relationships ○ Certified Practicing Accountants and other financial specialists - to assist with financial management and reporting issues ○ Governance specialists and lawyers - to assist councils resolve legal issues ○ HR and procurement experts - to help with processes like recruiting a CEO or undertaking a major land transaction. • Only the Inspector would have the power to appoint Monitors. • Local governments would be able to make requests to the Inspector to appoint Monitors for a specific purpose. <p>Monitor Case Study 1 – Financial Management</p> <p>The Inspector receives information that a local government is not collecting rates correctly under the <i>Local Government Act 1995</i>. Upon initial review, the Inspector identifies that there may be a problem. The Inspector appoints a Monitor who specialises in financial management in local government. The Monitor visits the local government and identifies that the system used to manage rates is not correctly issuing rates notices. The Monitor works with</p> | <p>As above</p> <p><u>Recommendation – Items 1.1 to 1.3</u></p> <ol style="list-style-type: none"> 1. Support the proposed reforms as they align with the sectors position on external oversight and support. 2. Request the Minister to explore alternate mechanisms for resolving local level complaints. |

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| <p>the local government to rectify the error, and issue corrections to impacted ratepayers.</p> <p>Monitor Case Study 2 – Dispute Resolution The Inspector receives a complaint from one councillor that another councillor is repeatedly publishing derogatory personal attacks against another councillor on social media, and that the issue has not been able to be resolved at the local government level. The Inspector identifies that there has been a relationship breakdown between the two councillors due to a disagreement on council.</p> <p>The Inspector appoints a Monitor to host mediation sessions between the councillors. The Monitor works with the councillors to address the dispute. Through regular meetings, the councillors agree to a working relationship based on the council’s code of conduct. After the mediation, the Monitor occasionally makes contact with both councillors to ensure there is a cordial working relationship between the councillors.</p> | |
| <p>1.3 Conduct Panel</p> | |
| <ul style="list-style-type: none"> • The Standards Panel is proposed to be replaced with a new Local Government Conduct Panel. • The Conduct Panel would be comprised of suitably qualified and experienced professionals. Sitting councillors will not be eligible to serve on the Conduct Panel. • The Inspector would provide evidence to the Conduct Panel for adjudication. • The Conduct Panel would have powers to impose stronger penalties – potentially including being able to suspend councillors for up to three months, with an appeal mechanism. • For very serious or repeated breaches of the Local Government Act, the Conduct Panel would have the power to recommend prosecution through the courts. • Any person who is subject to a complaint before the Conduct Panel would have the right to address the Conduct Panel before the Panel makes a decision. | <p>As above</p> <p><u>Recommendation – Items 1.1 to 1.3</u></p> <ol style="list-style-type: none"> 1. Support the proposed reforms as they align with the sectors position on external oversight and support. 2. Request the Minister to explore alternate mechanisms for resolving local level complaints. |

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| <p>1.4 Review of Penalties</p> | |
| <ul style="list-style-type: none"> Penalties for breaching the Local Government Act are proposed to be strengthened. It is proposed that the suspension of councillors (for up to three months) is established as the main penalty where a councillor breaches the Local Government Act or Regulations on more than one occasion. Councillors who are disqualified would not be eligible for sitting fees or allowances. They will also not be able to attend meetings, or use their official office (such as their title or council email address). It is proposed that a councillor who is suspended multiple times may become disqualified from office. Councillors who do not complete mandatory training within a certain timeframe will also not be able to receive sitting fees or allowances. | <p><u>Current Local Government Position</u> Items 1.4 and 1.5 <u>expand upon</u> Advocacy Position 2.6.9 - ‘Stand Down Proposal’</p> <p><i>WALGA supports, in principle, a proposal for an individual elected member to be ‘stood down’ from their duties when they are under investigation, have been charged, or when their continued presence prevents Council from properly discharging its functions or affects the Council’s reputation, subject to further policy development work being undertaken. Further policy development of the Stand Down Provisions must involve active consultation with WALGA and specific consideration of the following issues of concern to the Sector:</i></p> <ol style="list-style-type: none"> <i>That the Department of Local Government endeavour to ensure established principles of natural justice and procedural fairness are embodied in all aspects of the proposed Stand Down Provisions; and</i> <i>That activities associated with the term ‘disruptive behaviour’, presented as reason to stand down a defined Elected Member on the basis their continued presence may make a Council unworkable, are thoroughly examined and clearly identified to ensure there is awareness, consistency and opportunity for avoidance.</i> <p>Comment The Local Government sector has long-standing advocacy positions supporting stronger penalties as a deterrent to disruptive Council Member behaviours. Clear guidance will be required to ensure there is consistent application of the power given to Presiding Members.</p> <p><u>Recommendation - Item 1.4</u> Supported</p> |
| <p>1.5 Rapid Red Card Resolutions</p> | |
| <ul style="list-style-type: none"> It is proposed that Standing Orders are made consistent across Western Australia (see item 2.6). Published recordings of all meetings would also become standard (item 3.1). | |

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| <ul style="list-style-type: none"> • It is proposed that Presiding Members have the power to “red card” any attendee (including councillors) who unreasonably and repeatedly interrupt council meetings. This power would: <ul style="list-style-type: none"> ○ Require the Presiding Member to issue a clear first warning ○ If the disruptions continue, the Presiding Member will have the power to “red card” that person, who must be silent for the rest of the meeting. A councillor issued with a red card will still vote, but must not speak or move motions ○ If the person continues to be disruptive, the Presiding Member can instruct that they leave the meeting. • Any Presiding Member who uses the “red card” or ejection power will be required to notify the Inspector. • Where an elected member refuses to comply with an instruction to be silent or leave, or where it can be demonstrated that the presiding member has not followed the law in using these powers, penalties can be imposed through a review by the Inspector. | <p><u>Recommendation - Item 1.5</u> Supported subject to a provision permitting council members to call a point of order to overrule the presiding member by absolute majority.</p> |
| <p>1.6 Vexatious Complaint Referrals</p> | |
| <ul style="list-style-type: none"> • Local governments already have a general responsibility to provide ratepayers and members of the public with assistance in responding to queries about the local government’s operations. Local governments should resolve queries and complaints in a respectful, transparent and equitable manner. • Unfortunately, local government resources can become unreasonably diverted when a person makes repeated vexatious queries, especially after a local government has already provided a substantial response to the person’s query. • It is proposed that if a person makes repeated complaints to a local government CEO that are vexatious, the CEO will have the power to refer that person’s complaints to the Inspectorate, which after assessment of the facts may then rule the complaint vexatious. | <p><u>Current Local Government Position</u> Item 1.6 <u>expands upon</u> Advocacy Position 2.6.11 – ‘Vexatious complainants in relation to FOI applications’ <i>WALGA advocates for the Freedom of Information Act 1992 (WA) to be reviewed, including consideration of:</i></p> <ol style="list-style-type: none"> 1. <i>Enabling the Information Commissioner to declare vexatious applicants similar to the provisions of section 114 of the Right to Information Act 2009 (QLD);</i> 2. <i>Enabling an agency to recover reasonable costs incurred through the processing of a Freedom of Information access application where the application is subsequently withdrawn; and</i> 3. <i>Modernisation to address the use of electronic communications and information.</i> <p>Comment The Act has been expanded significantly in recent years to permit an increased level of public involvement, scrutiny and access to information</p> |

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| | <p>relating to the decisions, operations and affairs of Local Government in WA. Introducing a means to limit capacity for unreasonable complainants to negatively impact Local Governments will provide a necessary balance between the openness and transparency of the sector and the reasonable entitlement of citizens to interact with their Local Government.</p> <p><u>Recommendation – Item 1.6</u> Supported, subject to the legislation including the ability of a person to lodge an appeal with the Inspector.</p> |
| 1.7 Minor Other Reforms | |
| <ul style="list-style-type: none"> • Potential other reforms to strengthen guidance for local governments are being considered. • For example, one option being considered is the potential use of sector-wide guidance notices. Guidance notices could be published by the Minister or Inspector, to give specific direction for how local governments should meet the requirements of the Local Government Act and Regulations. For instance, the Minister could publish guidance notices to clarify the process for how potential conflicts of interests should be managed. • It is also proposed (see item 1.1) that the Inspector has the power to issue notices to individual local governments to require them to rectify non-compliance with the Act or Regulations. | <p><u>Current Local Government Position</u> Item 1.7 aligns with Advocacy Position 2.6 - ‘Support DLGSC as service provider / capacity builder’</p> <p><i>WALGA supports the continuance of the Department of Local Government, Sport and Cultural Industries as a direct service provider of compliance and recommend the Department fund its capacity building role through the utilisation of third party service providers. In addition, WALGA calls on the State Government to ensure there is proper resourcing of the Department of Local Government, Sport and Cultural Industries to conduct timely inquiries and interventions when instigated under the provisions of the Local Government Act 1995.</i></p> <p>Comment Operational guidance from the Department of Local Government, Sport and Cultural Industries leads to consistent understanding and application of statutory provisions by Local Government. The proposed reform that the Inspector issue non-compliance notices appears to replicate the Minister’s powers under Section 9.14A – ‘Notice to prevent continuing contravention’.</p> <p><u>Recommendation – Item 1.7</u> Supported</p> |

Theme 2: Reducing Red Tape, Increasing Consistency and Simplicity

| PROPOSED REFORMS | WALGA COMMENTS & RECOMMENDATIONS |
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| 2.1 Resource Sharing | |
| <ul style="list-style-type: none"> • Amendments are proposed to encourage and enable local governments, especially smaller regional local governments, to share resources, including Chief Executive Officers and senior employees. • Local governments in bands 2, 3 or 4 would be able to appoint a shared CEO at up to two salary bands above the highest band. For example, a band 3 and a band 4 council sharing a CEO could remunerate to the level of band 1. | <p><u>Current Local Government Position</u> Item 2.1 aligns with Advocacy Position 2.6 – Local Government Legislation – ‘Avoid red tape and ‘de-clutter’ the extensive regulatory regime that underpins the Local Government Act’ and Advocacy Position 2.3.1 - ‘Regional Collaboration’.</p> <p><i>Local Governments should be empowered to form single and joint subsidiaries, and beneficial enterprises. In addition, compliance requirements of Regional Councils should be reviewed and reduced.</i></p> <p>Comment The proposed reforms will rely upon statutory provisions that enable and enhance regional collaboration. Recent over-regulation of Regional Subsidiaries in 2016 resulted in no subsidiaries being formed since that time.</p> <p><u>Recommendation – Item 2.1</u> Supported</p> |
| 2.2 Standardisation of Crossovers | |
| <ul style="list-style-type: none"> • It is proposed to amend the <i>Local Government (Uniform Local Provisions) Regulations 1996</i> to standardise the process for approving crossovers for residential properties and residential developments on local roads. • A Crossover Working Group has provided preliminary advice to the Minister and DLGSC to inform this. • The DLGSC will work with the sector to develop standardised design and construction standards. | <p><u>Current Local Government Position</u></p> <p>Comment WALGA developed the Template Crossover Guideline and Specification resource in 2017 and have been part of the Minister’s working group on red tape reduction that has been looking at standardisation of crossovers.</p> <p>It is envisaged that the process for crossovers will be standardised, however the design standards would be different dependant on location.</p> <p><u>Recommendation – Item 2.2</u> Supported</p> |

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| 2.3 Introduce Innovation Provisions | |
| <ul style="list-style-type: none"> • New provisions are proposed to allow exemptions from certain requirements of the <i>Local Government Act 1995</i>, for: <ul style="list-style-type: none"> ○ Short-term trials and pilot projects ○ Urgent responses to emergencies. | <p>Comment It is arguable communities expect all levels of Government will apply innovative solutions to complex and emerging issues difficult to resolve by traditional means. Exemptions constructed with appropriate checks and balances, particularly where expenditure of public funds are concerned, has potential to facilitate efficient and effective outcomes.</p> <p><u>Recommendation – Item 2.3</u> Supported</p> |
| 2.4 Streamline Local Laws | |
| <ul style="list-style-type: none"> • It is proposed that local laws would only need to be reviewed by the local government every 15 years. • Local laws not reviewed in the timeframe would lapse, meaning that old laws will be automatically removed and no longer applicable. • Local governments adopting Model Local Laws will have reduced advertising requirements. | <p><u>Current Local Government Position</u> Items 2.4, 2.5 and 2.6 <u>expand upon</u> Advocacy Position 2.6.35 - ‘Local law-making process should be simplified’.</p> <p><i>The Local Law making process should be simplified as follows:</i></p> <ul style="list-style-type: none"> • <i>The requirement to give state-wide notice should be reviewed, with consideration given to Local Governments only being required to provide local public notice;</i> • <i>Eliminate the requirement to consult on local laws when a model is used;</i> • <i>Consider deleting the requirement to review local laws periodically. Local Governments, by administering local laws, will determine when it is necessary to amend or revoke a local law; and</i> • <i>Introduce certification of local laws by a legal practitioner in place of scrutiny by Parliament’s Delegated Legislation Committee.</i> <p>Comment Proposed reforms meet the Sector’s preference for simplified local law-making processes. Model local laws are supported, whilst recognising the models themselves will require review by State Government departments with the relevant administrative responsibility. For example, the Model Local Law (Standing Orders) 1998 formed the basis of many Local Government meeting procedures local law but no review was completed. This model was</p> |

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| | <p>superseded by individual local laws with added contemporary provisions. This pattern will repeat itself if model local laws are not reviewed to remain contemporary to the Sector’s requirements.</p> <p><u>Recommendation – Items 2.4 to 2.6</u> Supported</p> |
| <p>2.5 Simplifying Approvals for Small Business and Community Events</p> | |
| <ul style="list-style-type: none"> • Proposed reforms would introduce greater consistency for approvals for: <ul style="list-style-type: none"> ○ alfresco and outdoor dining ○ minor small business signage rules ○ running community events. | <p>As above</p> <p><u>Recommendation – Items 2.4 to 2.6</u> Supported</p> |
| <p>2.6 Standardised Meeting Procedures, Including Public Question Time</p> | |
| <ul style="list-style-type: none"> • To provide greater clarity for ratepayers and applicants for decisions made by council, it is proposed that the meeting procedures and standing orders for all local government meetings, including for public question time, are standardised across the State. • Regulations would introduce standard requirements for public question time, and the procedures for meetings generally. • Members of the public across all local governments would have the same opportunities to address council and ask questions. | <p>As above</p> <p><u>Recommendation – Items 2.4 to 2.6</u> Supported</p> |
| <p>2.7 Regional Subsidiaries</p> | |
| <ul style="list-style-type: none"> • Work is continuing to consider how Regional Subsidiaries can be best established to: <ul style="list-style-type: none"> ○ Enable Regional Subsidiaries to provide a clear and defined public benefit for people within member local governments ○ Provide for flexibility and innovation while ensuring appropriate transparency and accountability of ratepayer funds ○ Where appropriate, facilitate financing of initiatives by Regional Subsidiaries within a reasonable and defined limit of risk | <p><u>Current Local Government Position</u> Item 2.7 aligns with Advocacy Position 2.3.1 - ‘Regional Collaboration’: <i>Local Governments should be empowered to form single and joint subsidiaries, and beneficial enterprises. In addition, compliance requirements of Regional Councils should be reviewed and reduced.</i></p> <p>Comment Under the Regional Subsidiary model, two or more Local Governments can</p> |

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| <ul style="list-style-type: none"> ○ Ensure all employees of a Regional Subsidiary have the same employment conditions as those directly employed by member local governments. | <p>establish a regional subsidiary to undertake a shared service function on behalf of its member Local Governments. The model provides increased flexibility when compared to the Regional Local Government model because regional subsidiaries are primarily governed and regulated by a charter rather than legislation. While the regional subsidiary model’s governance structure is primarily representative, it allows independent and commercially focussed directors to be appointed to the board of management.</p> <p>A key advantage of the regional subsidiary model is the use of a charter, as opposed to legislation, as the primary governance and regulatory instrument. Accordingly, the legislative provisions governing the establishment of regional subsidiaries should be light, leaving most of the regulation to the regional subsidiary charter, which can be adapted to suit the specific circumstances of each regional subsidiary.</p> <p><u>Recommendation – Item 2.7</u> Supported subject to the use of a charter as the primary governance and regulatory instrument.</p> |

Theme 3: Greater Transparency & Accountability

| PROPOSED REFORMS | WALGA COMMENTS & RECOMMENDATIONS |
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| 3.1 Recordings and Live-Streaming of All Council Meetings | |
| <ul style="list-style-type: none"> • It is proposed that all local governments will be required to record meetings. • Band 1 and 2 local governments would be required to livestream meetings, and make video recordings available as public archives. • Band 1 and 2 are larger local governments are generally located in larger urban areas, with generally very good telecommunications infrastructure, and many already have audio-visual equipment. • Band 1 and 2 local governments would be required to livestream meetings, and make video recordings available as public archives. • Several local governments already use platforms such as YouTube, Microsoft Teams, and Vimeo to stream and publish meeting recordings. • Limited exceptions would be made for meetings held outside the ordinary council chambers, where audio recordings may be used. • Recognising their generally smaller scale, typically smaller operating budget, and potential to be in more remote locations, band 3 and 4 local governments would be required to record and publish audio recordings, at a minimum. These local governments would still be encouraged to livestream or video record meetings. • All council meeting recordings would need to be published at the same time as the meeting minutes. Recordings of all confidential items would also need to be submitted to the DLGSC for archiving. | <p><u>Current Local Government Position</u> Item 3.1 expands upon Advocacy Position 2.6 – ‘Promote a size and scale compliance regime’ and Advocacy Position 2.6.31 - ‘Attendance at Council Meetings by Technology’</p> <p><i>A review of the ability of Elected Members to log into Council meetings should be undertaken.</i></p> <p>Comment Local Governments introducing electronic meeting procedures and the means for remote public attendance in response to the COVID-19 pandemic led to a swift uptake of streaming Council meetings. The proposed reform that Band 1 and 2 Local Governments will be required to livestream meetings may be problematic where technical capability such as reliable bandwidth impacts the district.</p> <p>The sector does not support the requirement to submit recordings of confidential items to the Department. Confidential items may include legal advice which is subject to legal privilege. Such privilege is at risk of being lost by the dissemination of the advice.</p> <p><u>Recommendation – Item 3.1</u></p> <ol style="list-style-type: none"> 1. Support live streaming the ordinary and special council meetings of Band 1 and 2 Local Governments and audio recording the ordinary and special council meetings of Band 3 and 4 Local Governments. 2. Do not support archiving the recordings of confidential matters by the Department of Local Government, Sport and Cultural Industries. |

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| 3.2 Recording All Votes in Council Minutes | |
| <ul style="list-style-type: none"> To support the transparency of decision-making by councillors, it is proposed that the individual votes cast by all councillors for all council resolutions would be required to be published in the council minutes, and identify those for, against, on leave, absent or who left the chamber. Regulations would prescribe how votes are to be consistently minuted. | <p>Comment There is an evolving common practice that Council Minutes record the vote of each Council Member present at a meeting.</p> <p><u>Recommendation – Item 3.2</u> Supported</p> |
| 3.3 Clearer Guidance for Meeting Items that may be Confidential | |
| <ul style="list-style-type: none"> Recognising the importance of open and transparent decision-making, it is considered that confidential meetings and confidential meeting items should only be used in limited, specific circumstances. It is proposed to make the Act more specific in prescribing items that may be confidential, and items that should remain open to the public. Items not prescribed as being confidential could still be held as confidential items only with the prior written consent of the Inspector. All confidential items would be required to be audio recorded, with those recordings submitted to the DLGSC (see Item 3.1). | <p>Comment Clarifying the provisions of the Act has broad support within the sector. New reforms requiring Local Governments to video or audio record Council meetings (Item 3.1) will add to the formal record of proceedings that includes written Minutes. While being supported, the requirement to provide audio recordings of confidential matters to the DLGSC is queried on the basis that written and audio records can be readily accessed from a Local Government if required.</p> <p>The sector has concerns with submitting confidential items to the DLGSC is supported.</p> <p><u>Recommendation – Item 3.3</u> Supported, subject to deleting the requirement to provide confidential items to the DLGSC.</p> |
| 3.4 Additional Online Registers | |
| <ul style="list-style-type: none"> It is proposed to require local governments to report specific information in online registers on the local government’s website. Regulations would prescribe the information to be included. The following new registers, each updated quarterly, are proposed: <ul style="list-style-type: none"> Lease Register to capture information about the leases the local government is party to (either as lessor or lessee) Community Grants Register to outline all grants and funding | <p>Comment This proposal follows recent Act amendments that ensure a range of information is published on Local Government websites. WALGA has sought clarity that the contracts register excludes contracts of employment.</p> <p><u>Recommendation – Item 3.4</u> Supported</p> |

| PROPOSED REFORMS | WALGA COMMENTS & RECOMMENDATIONS |
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| <p>provided by the local government</p> <ul style="list-style-type: none"> ○ Interests Disclosure Register which collates all disclosures made by elected members about their interests related to matters considered by council ○ Applicant Contribution Register accounting for funds collected from applicant contributions, such as cash-in-lieu for public open space and car parking ○ Contracts Register that discloses all contracts above \$100,000. | |
| <p>3.5 Chief Executive Officer Key Performance Indicators (KPIs) be Published</p> | |
| <ul style="list-style-type: none"> ● To provide for minimum transparency, it is proposed to mandate that the KPIs agreed as performance metrics for CEOs: <ul style="list-style-type: none"> ○ Be published in council meeting minutes as soon as they are agreed prior to (before the start of the annual period) ○ The KPIs and the results be published in the minutes of the performance review meeting (at the end of the period) ○ The CEO has a right to provide written comments to be published alongside the KPIs and results to provide context as may be appropriate (for instance, the impact of events in that year that may have influenced the results against KPIs). | <p>Comment</p> <p>In principle, this proposal has some merit and would be particularly effective if all CEO KPIs consistently reflect Strategic Community Plans and Corporate Business Plans of Local Governments, together with KPIs reflective of the CEO’s statutory functions under Section 5.41 of the Act. This approach would inform the community of the CEO’s performance related to the strategic direction and operational function of the Local Government.</p> <p>In practice, the drafting of statutory provisions will require sensitive consideration of certain KPIs i.e. those relating to issues affecting the workplace or identified risk-based concerns, to reflect the way Audit Committees currently deal with some internal control, risk and legislative compliance issues confidentially. This approach will protect the interests of Local Governments and other parties associated with such KPIs. It would be prudent for exemptions to be provided, based on matters of confidentiality. The proposed reforms and recent Act amendments signal a clear intent to permit closer community involvement and scrutiny of Local Government. However, negative consequences are likely if Local Government Council’s responsibility as the employing authority of the CEO became blurred due to perceived community entitlement to comment, question and influence KPIs and the performance review process. Additionally, the publication of CEO KPI’s will elevate this employment position to a high degree of public scrutiny seldom evident in the public or private sector, if at all. It is worth investigating whether the proposed reforms considered whether this factor could impact on the recruitment of</p> |

| PROPOSED REFORMS | WALGA COMMENTS & RECOMMENDATIONS |
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| | <p>CEO's, particularly from outside the Local Government sector. The results of performance reviews should be confidential information between the employer and employee and should not be published and should remain within the confidential human resource records of the organisation.</p> <p><u>Recommendation – Item 3.5</u></p> <ol style="list-style-type: none"> 1. Conditionally support the reporting of CEO KPIs that are consistent with the strategic direction and operational function of the Local Government, subject to exemptions for publishing KPI's of a confidential nature; 2. Do not support the results of performance reviews being published. |

Theme 4: Stronger Local Democracy and Community Engagement

| PROPOSED REFORMS | WALGA COMMENTS & RECOMMENDATIONS |
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| <p>4.1 Community and Stakeholder Engagement Charters</p> | |
| <ul style="list-style-type: none"> It is proposed to introduce a requirement for local governments to prepare a community and stakeholder engagement charter which sets out how local government will communicate processes and decisions with their community. A model Charter would be published to assist local governments who wish to adopt a standard form. | <p><u>Current Local Government Position</u> Items 4.1 and 4.2 generally align with Advocacy Position 2.6.34 - ‘Support responsive, aspirational and innovative community engagement principles’</p> <p><i>The Local Government sector supports:</i></p> <ol style="list-style-type: none"> <i>Responsive, aspirational and innovative community engagement principles</i> <i>Encapsulation of aims and principles in a community engagement policy, and</i> <i>The option of hosting an Annual Community Meeting to present on past performance and outline future prospects and plans.</i> <p>Comment As indicated in Item 4.1 commentary, many Local Governments have already developed stakeholder engagement charters, or similar engagement strategies, that reflect their unique communities of interest. The development of guidance by the DLGSC, based on standards such as the International Standard for Public Participation practice, is supported in favour of taking a prescriptive approach or conducting a survey for the sake of a survey. Item 4.2 has potential to provide benchmarking of community satisfaction levels across Band 1 and 2 Local Governments.</p> <p><u>Recommendation – Item 4.1</u> Supported</p> |
| <p>4.2 Ratepayer Satisfaction Surveys (Band 1 and 2 local governments only)</p> | |
| <ul style="list-style-type: none"> It is proposed to introduce a requirement that every four years, all local governments in bands 1 and 2 hold an independently-managed ratepayer satisfaction survey. Results would be required to be reported publicly at a council meeting | <p><u>Recommendation – Item 4.2</u> Support the conduct of community, rather than ratepayer, satisfaction surveys.</p> |

| PROPOSED REFORMS | WALGA COMMENTS & RECOMMENDATIONS |
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| <p>and published on the local government’s website.</p> <ul style="list-style-type: none"> All local governments would be required to publish a response to the results. | |
| <p>4.3 Introduction of Preferential Voting</p> | |
| <ul style="list-style-type: none"> Preferential voting is proposed be adopted as the method to replace the current first past the post system in local government elections. In preferential voting, voters number candidates in order of their preferences. Preferential voting is used in State and Federal elections in Western Australia (and in other states). This provides voters with more choice and control over who they elect. All other states use a form of preferential voting for local government. | <p><u>Current Local Government Position</u> Item 4.3 <u>does not align</u> with Advocacy Position 2.5.1 – ‘First Past the Post voting system’</p> <p><i>The Local Government sector supports:</i></p> <ol style="list-style-type: none"> Four year terms with a two year spill Greater participation in Local Government elections The option to hold elections through: <ul style="list-style-type: none"> Online voting Postal voting, and In-person voting Voting at Local Government elections to be voluntary The first past the post method of counting votes <p>Comment</p> <p>It should be noted that the sector’s advocacy against compulsory voting and ‘All in, All out’ 4 year terms has been successful and these items are not included in the reform proposals.</p> <p>The introduction of preferential voting will be a return to the system of voting prior to the <i>Local Government Act 1995</i>. The Local Government Advisory Board reported on voting systems in 2006 (<i>Local Government Structural Reform in Western Australia: Ensuring the Future Sustainability of Communities</i>) and provided the following comments in support of both first past the post voting and preferential voting: <i>‘Comments in support of retaining first past the post include:</i></p> <ul style="list-style-type: none"> Quick to count. Preferential voting is time consuming to count. Easily understood. Removes politics out of campaigning. Preferential will encourage |

| PROPOSED REFORMS | WALGA COMMENTS & RECOMMENDATIONS |
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| | <p><i>alliances formed for the distribution of preferences and party politics into local government.</i></p> <ul style="list-style-type: none"> • <i>Preferential voting allows election rigging through alliances or ‘dummy’ candidates.</i> • <i>In a preferential system, the person that receives the highest number of first preference votes does not necessarily get elected.’</i> <p><i>‘Comments in support of replacing first past the post include:</i></p> <ul style="list-style-type: none"> • <i>Preferential voting is more democratic and removes an area of confusion.</i> • <i>Preferential voting ensures that the most popular candidates are elected who best reflect the will of the voters.</i> • <i>Preferential system should be introduced. In FPP elections, candidates work together to get votes for each other. Preferential would make it more difficult for this practice to take place.</i> • <i>FPP does not adequately reflect the wishes of electors when there are three candidates or more.</i> • <i>FPP is unsuitable when there is more than one vacancy.</i> • <i>Allows for a greater representation from a range of interest groups and prevents domination of elections by mainstream party politics.’</i> <p>The Sector supports first past the post voting for its simplicity and fundamental apolitical nature, therefore the proposed reforms are not supported.</p> <p>A number of Local Governments raised the need for a fall back position if this proposal is progressed by the State Government. Optional Preferential voting was considered as the better preferential voting system according to the feedback.</p> <p><u>Recommendation – Item 4.3</u></p> <ol style="list-style-type: none"> 1. Oppose the proposal for preferential voting and support first past the post method of counting votes. 2. However, if ‘first past the post’ is not retained then optional preferential voting is preferred. |

| PROPOSED REFORMS | WALGA COMMENTS & RECOMMENDATIONS |
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| 4.4 Public Vote to Elect the Mayor and President | |
| <ul style="list-style-type: none"> • Mayors and Presidents of all local governments perform an important public leadership role within their local communities. • Band 1 and 2 local governments generally have larger councils than those in bands 3 and 4. • Accordingly, it is proposed that the Mayor or President for all band 1 and 2 councils is to be elected through a vote of the electors of the district. Councils in bands 3 and 4 would retain the current system. • A number of Band 1 and Band 2 councils have already moved towards Public Vote to Elect the Mayor and President in recent years, including City of Stirling and City of Rockingham. | <p><u>Current Local Government Position</u> Item 4.4 does not align with Advocacy Position 2.5.2 - ‘Election of Mayors and Presidents be at the discretion of Local Government.’ <i>Local Governments should determine whether their Mayor or President will be elected by the Council or elected by the community.</i></p> <p>Comment There are 43 Band 1 and 2 Local Governments with 22 popularly electing the Mayor or President: Band 1 - 15 Band 2 - 7</p> <p>The remaining 21 Local Governments have a Council-elected Mayor or President. The sector does not support a requirement for the role of Mayor or President to be determined by electors. The sector considers that its current system of having the Mayor elected directly by Council assists in ensuring the Mayor/President has the support of the majority of Council. Further, it assists in avoiding party politics.</p> <p><u>Recommendation – Item 4.4</u> Oppose this proposal and support retaining the current provision, that the election of Mayors and Presidents be at the discretion of each Local Government.</p> |
| 4.5 Tiered Limits on the Number of Councillors | |
| <ul style="list-style-type: none"> • It is proposed to limit the number of councillors based on the population of the entire local government. • Some smaller local governments have already been moving to having smaller councils to reduce costs for ratepayers. • The Local Government Panel Report proposed: <ul style="list-style-type: none"> ○ For a population of up to 5,000 – five councillors (including the President) | <p><u>Current Local Government Position</u> Item 4.5 does not align with Advocacy Position 2.5.1 – ‘Councils consist of between six and 15 (including the Mayor/President)’ <i>Local Governments being enabled to determine the number of Elected Members required on the Council between six and 15 (including the Mayor/President)</i></p> |

| PROPOSED REFORMS | WALGA COMMENTS & RECOMMENDATIONS |
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| <ul style="list-style-type: none"> ○ population of between 5,000 and 75,000 – five to nine councillors (including the Mayor/President) ○ population of above 75,000 – nine to fifteen councillors (including Mayor). | <p>Comment The proposed reform to restrict Local Governments with populations under 5,000 to 5 Council Members does not reflect the varied communities of interest within this grouping. Some Local Governments are essentially regional centres such as the Shires of Katanning (9), Dandaragan (9), Merredin (9), Moora (9) and Northampton (9) (current Councillor numbers bracketed). Local Governments such as the Shire of Ngaanyatjarraku (9) manage substantial land areas, manage isolated communities such as the Shire of Meekatharra (7) and culturally diverse communities such as the Shire of Christmas Island (9). Some Local Governments with populations up to 5,000 warrant a greater number of Councillors to effectively share the representative role that Council Members play within their communities.</p> <p>The additional proposed reforms in population categories over 5,000 generally reflect the current Councillor numbers.</p> <p><u>Recommendation – Item 4.5</u> Recommend 5 to 7 Council Members for populations up to 5,000 and support the remaining proposed reforms.</p> |
| <p>4.6 No Wards for Small Councils (Band 3 and 4 Councils only)</p> | |
| <ul style="list-style-type: none"> ● It is proposed that the use of wards for councils in bands 3 and 4 is abolished. ● Wards increase the complexity of elections, as this requires multiple versions of ballot papers to be prepared for a local government’s election. ● In smaller local governments, the population of wards can be very small. ● These wards often have councillors elected unopposed, or elect a councillor with a very small number of votes. Some local governments have ward councillors elected with less than 50 votes. ● There has been a trend in smaller local governments looking to reduce the use of wards, with only 10 councils in bands 3 and 4 still having wards. | <p>Comment The proposed reform to discontinue wards in Band 3 and 4 Local Governments brings alignment with the majority and provides that affected Local Governments will no longer have to conduct 8 year ward reviews or make representation to the Local Government Advisory Board to revert to a no wards system.</p> <p>Remaining proposed reforms will improve and clarify election processes.</p> <p><u>Recommendation – Items 4.6 to 4.9</u> Supported</p> |

| PROPOSED REFORMS | WALGA COMMENTS & RECOMMENDATIONS |
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| <p>4.7 Electoral Reform – Clear Lease Requirements for Candidate and Voter Eligibility</p> | |
| <ul style="list-style-type: none"> • Reforms are proposed to prevent the use of “sham leases” in council elections. Sham leases are where a person creates a lease only to be able to vote or run as a candidate for council. • The City of Perth Inquiry Report identified sham leases as an issue. • Electoral rules are proposed to be strengthened: <ul style="list-style-type: none"> ○ A minimum lease period of 12 months will be required for anyone to register a person to vote or run for council. ○ Home based businesses will not be eligible to register a person to vote or run for council, because any residents are already the eligible voter(s) for that address. ○ Clarifying the minimum criteria for leases eligible to register a person to vote or run for council. • The reforms would include minimum lease periods to qualify as a registered business (minimum of 12 months), and the exclusion of home based businesses (where the resident is already eligible) and very small sub-leases. • The basis of eligibility for each candidate (e.g. type of property and suburb of property) is proposed to be published, including in the candidate pack for electors. | <p>As above</p> <p><u>Recommendation – Items 4.6 to 4.9</u> Supported</p> |
| <p>4.8 Reform of Candidate Profiles</p> | |
| <ul style="list-style-type: none"> • Further work will be undertaken to evaluate how longer candidate profiles could be accommodated. • Longer candidate profiles would provide more information to electors, potentially through publishing profiles online. • It is important to have sufficient information available to assist electors make informed decisions when casting their vote. | <p>As above</p> <p><u>Recommendation – Items 4.6 to 4.9</u> Supported</p> |

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| <p>4.9 Minor Other Electoral Reforms</p> | |
| <ul style="list-style-type: none"> • Minor other electoral reforms are proposed to include: <ul style="list-style-type: none"> ○ The introduction of standard processes for vote re-counts if there is a very small margin between candidates (e.g. where there is a margin of less than 10 votes a recount will always be required) ○ The introduction of more specific rules concerning local government council candidates' use of electoral rolls. | <p>As above</p> <p><u>Recommendation – Items 4.6 to 4.9</u> Supported</p> |

Theme 5: Clear Roles and Responsibilities

| PROPOSED REFORMS | WALGA COMMENTS & RECOMMENDATIONS |
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| 5.1 Introduce Principles in the Act | |
| <ul style="list-style-type: none"> • It is proposed to include new principles in the Act, including: <ul style="list-style-type: none"> ○ The recognition of Aboriginal Western Australians ○ Tiering of local governments (with bands being as assigned by the Salaries and Allowances Tribunal) ○ Community Engagement ○ Financial Management. | <p><u>Current Local Government Position</u> Item 5.1 generally aligns with Advocacy Position 2.6 - Legislative Intent <i>Provide flexible, principles-based legislative framework.</i></p> <p><u>Recommendation – Item 5.1</u> Supported</p> |
| 5.2 Greater Role Clarity | |
| <ul style="list-style-type: none"> • The Local Government Act Review Panel recommended that roles and responsibilities of elected members and senior staff be better defined in law. • It is proposed that these roles and responsibilities are further defined in the legislation. • These proposed roles will be open to further consultation and input. These roles would be further strengthened through Council Communications Agreements (see item 5.3). <p>5.2.1 - Mayor or President Role</p> <ul style="list-style-type: none"> • It is proposed to amend the Act to specify the roles and responsibilities of the Mayor or President. • While input and consultation will inform precise wording, it is proposed that the Act is amended to generally outline that the Mayor or President is responsible for: <ul style="list-style-type: none"> ○ Representing and speaking on behalf of the whole council and the local government, at all times being consistent with the resolutions of council ○ Facilitating the democratic decision-making of council by presiding at council meetings in accordance with the Act ○ Developing and maintaining professional working relationships between councillors and the CEO ○ Performing civic and ceremonial duties on behalf of the local | <p><u>Current Local Government Position</u> Item 5.2 aligns with Advocacy Position 2.6.36 - ‘Roles and Responsibilities’</p> <p><i>That clarification of roles and responsibilities for Mayors/ Presidents, Councillors and CEOs be reviewed to ensure that there is no ambiguity.</i></p> <p><u>Recommendation – Item 5.2</u> Supported</p> <p><u>Recommendation – Item 5.2.1</u> Supported</p> |

| PROPOSED REFORMS | WALGA COMMENTS & RECOMMENDATIONS |
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| <p>government Working effectively with the CEO and councillors in overseeing the delivery of the services, operations, initiatives and functions of the local government.</p> <p>5.2.2 - Council Role</p> <ul style="list-style-type: none"> • It is proposed to amend the Act to specify the roles and responsibilities of the Council, which is the entity consisting of all of the councillors and led by the Mayor or President. • While input and consultation will inform precise wording, it is proposed that the Act is amended to generally outline that the Council is responsible for: <ul style="list-style-type: none"> ○ Making significant decisions and determining policies through democratic deliberation at council meetings ○ Ensuring the local government is adequately resourced to deliver the local governments operations, services and functions - including all functions that support informed decision-making by council ○ Providing a safe working environment for the CEO; ○ Providing strategic direction to the CEO; <p>Monitoring and reviewing the performance of the local government.</p> <p>5.2.3 - Elected Member (Councillor) Role</p> <ul style="list-style-type: none"> • It is proposed to amend the Act to specify the roles and responsibilities of all elected councillors. • While input and consultation will inform precise wording, it is proposed that the Act is amended to generally outline that every elected councillor is responsible for: <ul style="list-style-type: none"> ○ Considering and representing, fairly and without bias, the current and future interests of all people who live, work and visit the district (including for councillors elected for a particular ward) ○ Positively and fairly contribute and apply their knowledge, skill, and judgement to the democratic decision-making process of council ○ Applying relevant law and policy in contributing to the decision-making of the council ○ Engaging in the effective forward planning and review of the local governments' resources, and the performance of its operations, services, and functions | <p><u>Recommendation – Item 5.2.2</u> Supported</p> <p><u>Recommendation – Item 5.2.3</u> Supported</p> |

| PROPOSED REFORMS | WALGA COMMENTS & RECOMMENDATIONS |
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| <ul style="list-style-type: none"> ○ Communicating the decisions and resolutions of council to stakeholders and the public ○ Developing and maintaining professional working relationships with all other councillors and the CEO ○ Maintaining and developing their knowledge and skills relevant to local government ○ Facilitating public engagement with local government. <p>It is proposed that elected members should not be able to use their title (e.g. “Councillor”, “Mayor”, or “President”) and associated resources of their office (such as email address) unless they are performing their role in their official capacity.</p> <p>5.2.4 - CEO Role</p> <ul style="list-style-type: none"> ● The <i>Local Government Act 1995</i> requires local governments to employ a CEO to run the local government administration and implement the decisions of council. ● To provide greater clarity, it is proposed to amend the Act to specify the roles and responsibilities of all local government CEOs. ● While input and consultation will inform precise wording, it is proposed that the Act is amended to generally outline that the CEO of a local government is responsible for: <ul style="list-style-type: none"> ○ Coordinating the professional advice and assistance necessary for all elected members to enable the council to perform its decision-making functions ○ Facilitating the implementation of council decisions ○ Ensuring functions and decisions lawfully delegated by council are managed prudently on behalf of the council ○ Managing the effective delivery of the services, operations, initiatives and functions of the local government determined by the council ○ Providing timely and accurate information and advice to all councillors in line with the Council Communications Agreement (see item 5.3) ○ Overseeing the compliance of the operations of the local government with State and Federal legislation on behalf of the council ○ Implementing and maintaining systems to enable effective planning, management, and reporting on behalf of the council. | <p>5.2.4 There is the requirement for more detail for this item. The general direction of the proposal is supported, subject to including reference that the CEO is responsible for the recruitment and performance management of all staff as indicated in the current Act/Regulations.</p> <p><u>Recommendation – Items 5.2.4</u> Supported, subject to including reference that the CEO is responsible for the recruitment and performance management of all staff as indicated in the current Act/Regulations.</p> |

| PROPOSED REFORMS | WALGA COMMENTS & RECOMMENDATIONS |
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| <p>5.3 Council Communication Agreements</p> | |
| <ul style="list-style-type: none"> • In State Government, there are written Communication Agreements between Ministers and agencies that set standards for how information and advice will be provided. • It is proposed that local governments will need to have Council Communications Agreements between the council and the CEO. • These Council Communication Agreements would clearly specify the information that is to be provided to councillors, how it will be provided, and the timeframes for when it will be provided. • A template would be published by DLGSC. This default template will come into force if a council and CEO do not make a specific other agreement within a certain timeframe following any election. | <p>Comment The availability of information not already in the public domain to Councillors under Section 5.92 of the Act can become contentious in the absence of a clear statement in support of the function the Council Member is performing. This can place CEO's in the invidious position of ruling on the availability of a record of the Local Government, when it is also their function under Section 5.41(h) of the Act to <i>'ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law'</i>. Consistent availability of information motivates this proposed reform and it does not appear that individual Council Communication Agreements will be a means to that end. There is a better case for a uniform approach in the form of a regulated Agreement, in much the same way that the Communication Agreements between Ministers and agencies are based on provisions of the <i>Public Sector Management Act 1994</i>.</p> <p><u>Recommendation – Item 5.3</u> Support a consistent, regulated Communications Agreement.</p> |
| <p>5.4 Local Governments May Pay Superannuation Contributions for Elected Members</p> | |
| <ul style="list-style-type: none"> • It is proposed that local governments should be able to decide, through a vote of council, to pay superannuation contributions for elected members. These contributions would be additional to existing allowances. • Superannuation is widely recognised as an important entitlement to provide long term financial security. • Other states have already moved to allow councils to make superannuation contributions for councillors. • Allowing council to provide superannuation is important part of encouraging equality for people represented on council – particularly for women and younger people. • Providing superannuation to councillors recognises that the commitment to elected office can reduce a person's opportunity to undertake employment and earn superannuation contributions. | <p>Comment WALGA was in the process of consulting with the sector when this reform was announced. The feedback to date from Local Governments has majority support. The proposed discretionary approach will permit Local Governments to exercise general competence powers to make their own determination on paying superannuation to Council Members.</p> <p><u>Recommendation – Item 5.4</u> Supported</p> |

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| <p>5.5 Local Governments May Establish Education Allowances</p> | |
| <ul style="list-style-type: none"> • Local governments will have the option of contributing to the education expenses for councillors, up to a defined maximum value, for tuition costs for further education that is directly related to their role on council. • Councils will be able to decide on a policy for education expenses, up to a maximum yearly value for each councillor. Councils may also decide not to make this entitlement available to elected members. • Any allowance would only be able to be used for tuition fees for courses, such as training programs, diplomas, and university studies, which relate to local government. • Where it is made available, this allowance will help councillors further develop skills to assist with making informed decisions on important questions before council, and also provide professional development opportunities for councillors. | <p><u>Current Local Government Position</u> Item 5.5 <u>generally aligns</u> with Advocacy Position 2.8 - Elected Member Training <i>Support Local Governments being required to establish an Elected Member Training Policy to encourage training and include budgetary provision of funding for Elected Members;</i></p> <p>Comment The proposal augments recent Act amendments that require Local Governments to adopt a professional development policy for Council Members. Many Local Governments now budget for training requirements that align with the policy statement.</p> <p><u>Recommendation – Item 5.5</u> Supported</p> |
| <p>5.6 Standardised Election Caretaker period</p> | |
| <ul style="list-style-type: none"> • A statewide caretaker period for local governments is proposed. • All local governments across the State would have the same clearly defined election period, during which: <ul style="list-style-type: none"> ○ Councils do not make major decisions with criteria to be developed defining ‘major’ ○ Incumbent councillors who nominate for re-election are not to represent the local government, act on behalf of the council, or use local government resources to support campaigning activities. <p>There are consistent election conduct rules for all candidates.</p> | <p>Comment WALGA developed a template Caretaker Policy in 2017 on request for a consistent approach. There are no know instances where Caretaker Policy have led to unforeseen or unmanageable consequences impacting on decision-making functions.</p> <p><u>Recommendation – Item 5.6</u> Supported</p> |

| PROPOSED REFORMS | WALGA COMMENTS & RECOMMENDATIONS |
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| <p>5.7 Remove WALGA from the Act</p> | |
| <ul style="list-style-type: none"> The Local Government Panel Report recommended that WALGA not be constituted under the <i>Local Government Act 1995</i>. Separating WALGA out of the Act will provide clarity that WALGA is not a State Government entity. | <p>Comment WALGA is conducting its own due diligence on this proposal, previously identified in the Local Government Review Panel Report. The outcome of this reform would require a transition of WALGA from a body constituted under the Act to an incorporated association. It is important to the Local Government sector that the provisions relating to the mutual self-insurance scheme and tender exempt prequalified supply panels remain in the Act and are not affected by this proposal. Further work is being carried out by WALGA to fully understand the effect this proposal will have on WALGA and the sector.</p> <p><u>Recommendation – Item 5.7</u></p> <ol style="list-style-type: none"> Support for this proposal is subject to WALGA undertaking further due diligence on the broader implications of the proposal and subsequent consultation with the sector. Any proposed reforms ensure that: <ol style="list-style-type: none"> The Local Government Act retain statutory provisions permitting WALGA to provide the sector with the mutual self-insurance scheme and preferred supplier program tender exemptions; and There be no disadvantages to WALGA’s capacity to provide services and represent the interests of the sector. |
| <p>5.8 CEO Recruitment</p> | |
| <ul style="list-style-type: none"> It is proposed that DLGSC establishes a panel of approved panel members to perform the role of the independent person on CEO recruitment panels. Councils will be able to select an independent person from the approved list. <p>Councils will still be able to appoint people outside of the panel with the approval of the Inspector.</p> | <p>Comment The proposed reform augments the CEO Standards in relation to recruitment introduced in February 2021.</p> <p><u>Recommendation – Item 5.8</u> Supported on the proviso that no cost is associated with the use of the approved panel.</p> |

Theme 6: Improved Financial Management and Reporting

| PROPOSED REFORMS | WALGA COMMENTS & RECOMMENDATIONS |
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| 6.1 Model Financial Statements and Tiered Financial Reporting | |
| <ul style="list-style-type: none"> • The Minister strongly believes in transparency and accountability in local government. The public rightly expects the highest standards of integrity, good governance, and prudent financial management in local government. • It is critically important that clear information about the financial position of local governments is openly available to ratepayers. Financial information also supports community decision-making about local government services and projects. • Local governments differ significantly in the complexity of their operations. Smaller local governments generally have much less operating complexity than larger local governments. • The Office of the Auditor General has identified opportunities to improve financial reporting, to make statements clearer, and reduce unnecessary complexity. • Recognising the difference in the complexity of smaller and larger local governments, it is proposed that financial reporting requirements should be tiered – meaning that larger local governments will have greater financial reporting requirements than smaller local governments. • It is proposed to establish standard templates for Annual Financial Statements for band 1 and 2 councils, and simpler, clearer financial statements for band 3 and 4. • Online Registers, updated quarterly (see item 3.4), would provide faster and greater transparency than current annual reports. Standard templates will be published for use by local governments. • Simpler Strategic and Financial Planning (item 6.2) would also improve the budgeting process. | <p><u>Current Local Government Position</u> Items 6.1 and 6.2 generally align with Advocacy Position 2.6 – Support a size and scale compliance regime and Advocacy Position 2.6.24 – Financial Management and Procurement.</p> <p><i>The Local Government sector:</i></p> <ol style="list-style-type: none"> 1. <i>Requests the Minister for Local Government to direct the Department of Local Government to prepare a Model set of Financial Statements and Annual Budget Statements for the Local Government sector, in consultation with the Office of the Auditor General.</i> 2. <i>Requests the Department of Local Government to re-assess the amount of detail required to be included in annual financial reports, in particular for small and medium sized entities as suggested by the Office of Auditor General.</i> <p>Comment The Sector has a long-standing position for a broad review of the financial management and reporting provisions of the Act, which remain largely unchanged since commencing in 1996.</p> <p><u>Recommendation – Item 6.1</u> Supported</p> |

| PROPOSED REFORMS | WALGA COMMENTS & RECOMMENDATIONS |
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| <p>6.2 Simplify Strategic and Financial Planning</p> | |
| <ul style="list-style-type: none"> • Having clear information about the finances of local government is an important part of enabling informed public and ratepayer engagement and input to decision-making. • The framework for financial planning should be based around information being clear, transparent, and easy to understand for all ratepayers and members of the public. • In order to provide more consistency and clarity across the State, it is proposed that greater use of templates is introduced to make planning and reporting clearer and simpler, providing greater transparency for ratepayers. • Local governments would be required to adopt a standard set of plans, and there will be templates published by the DLGSC for use or adaption by local governments. • It is proposed that the plans that are required are: <ul style="list-style-type: none"> ○ Simplified Council Plans that replace existing Strategic Community Plans and set high-level objectives, with a new plan required at least every eight years. These will be short-form plans, with a template available from the DLGSC ○ Simplified Asset Management Plans to consistently forecast costs of maintaining the local government’s assets. A new plan will be required at least every ten years, though local governments should update the plan regularly if the local government gains or disposes of major assets (e.g. land, buildings, or roads). A template will be provided, and methods of valuations will be simplified to reduce red tape ○ Simplified Long Term Financial Plans will outline any long term financial management and sustainability issues, and any investments and debts. A template will be provided, and these plans will be required to be reviewed in detail at least every four years ○ A new Rates and Revenue Policy (see item 6.3) that identifies the approximate value of rates that will need to be collected in future years (referencing the Asset Management Plan and Long Term Financial Plan) – providing a forecast to ratepayers (updated at least every four years) | <p>As above</p> <p><u>Recommendation – Item 6.2</u> Supported</p> |

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| <ul style="list-style-type: none"> ○ The use of simple, one-page Service Proposals and Project Proposals that outline what proposed services or initiatives will cost, to be made available through council meetings. These will become Service Plans and Project Plans added to the yearly budget if approved by council. This provides clear transparency for what the functions and initiatives of the local government cost to deliver. Templates will be available for use by local governments | |
| <p>6.3 Rates and Revenue Policy</p> | |
| <ul style="list-style-type: none"> • The Rates and Revenue Policy is proposed to increase transparency for ratepayers by linking rates to basic operating costs and the minimum costs for maintaining essential infrastructure. • A Rates and Revenue Policy would be required to provide ratepayers with a forecast of future costs of providing local government services. • The Policy would need to reflect the Asset Management Plan and the Long Term Financial Plan (see item 6.2), providing a forecast of what rates would need to be, to cover unavoidable costs. • A template would be published for use or adaption by all local governments. • The Local Government Panel Report included this recommendation. | <p><u>Current Local Government Position</u> Item 6.3 generally aligns with Advocacy Position 2.1.6 - Rate Setting and WALGA's Rate Setting Policy Statement. <i>Councils' deliberative rate setting processes reference their Integrated Planning Framework – a thorough strategic, financial and asset management planning process – and draw upon the community's willingness and capacity to pay.</i></p> <p><u>Recommendation – Item 6.3</u> Supported</p> |
| <p>6.4 Monthly Reporting of Credit Card Statements</p> | |
| <ul style="list-style-type: none"> • The statements of a local government's credit cards used by local government employees will be required to be tabled at council at meetings on a monthly basis. • This provides oversight of incidental local government spending. | <p><u>Comment</u> This proposed reform reflects widespread common practice for credit card transactions to be included in monthly financial reports and lists of accounts paid.</p> <p><u>Recommendation – Item 6.4</u> Supported</p> |

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| <p>6.5 Amended Financial Ratios</p> | |
| <ul style="list-style-type: none"> Financial ratios will be reviewed in detail, building on work already underway by the DLGSC. The methods of calculating ratios and indicators will be reviewed to ensure that the results are accurate and useful. | <p><u>Current Local Government Position</u> Item 6.5 <u>aligns</u> with Advocacy Position 2.6.25 - Review and reduce financial ratios. <i>Advocate to the Minister for Local Government to amend the Local Government (Financial Management) Regulations 1996 to prescribe the following ratios:</i></p> <ol style="list-style-type: none"> Operating Surplus Ratio, Net Financial Liabilities Ratio, Debt Service Coverage Ratio, and Current Ratio. <p><u>Recommendation – Item 6.5 Supported</u></p> |
| <p>6.6 Audit Committees</p> | |
| <ul style="list-style-type: none"> To ensure independent oversight, it is proposed the Chair of any Audit Committee be required to be an independent person who is not on council or an employee of the local government. Audit Committees would also need to consider proactive risk management. To reduce costs, it is proposed that local governments should be able to establish shared Regional Audit Committees. The Committees would be able to include council members but would be required to include a majority of independent members and an independent chairperson. | <p><u>Current Local Government Position</u> Item 6.6 <u>does not align</u> with Advocacy Position 2.2.4 – Accountability and Audit</p> <p><i>That audit committees of Local Government, led and overseen by the Council, have a clearly defined role with an Elected Member majority and chair.</i></p> <p>Comment The Sector’s view is well established, that the Council must maintain, and be seen by the community to have, majority involvement and investment in the purpose of an Audit Committee. There is sector support for some independent members on the Audit Committee, however not a majority.</p> <p>The dual effect of the proposed reform is to guarantee a place for a majority of independent persons on Audit Committees, with the additional requirement that an independent person Chair this Committee. Presently, not all Local Government Audit Committees are able to include an independent person. This may be for a variety of reasons not least of which</p> |

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| | <p>is a lack of suitable, available candidates with the required qualification, skill and experience.</p> <p>It would be counter-productive if the proposed reforms led to the appointment of unsuitable independent persons to a skills-based role. The concept of Regional Audit Committees has apparent merit in this case but there is no detail regarding practicalities; for example, is the Regional Audit Committee intended to include the same independent persons who will meet separately with each Local Government within the region?</p> <p>There is too little certainty that the imperative question of appropriate representation will be managed as a consequence of the proposed reforms for it to be supported.</p> <p>The proposal for the Audit Committees to also consider proactive risk management is supported.</p> <p><u>Recommendation – Item 6.6</u></p> <ol style="list-style-type: none"> 1. Support the role of the Office of the Auditor General as the responsible entity for independent oversight of Local Government audits. 2. Support Audit Committees of Local Government <u>with an Elected Member majority</u> including independent members, and to consider proactive risk management issues. 3. Support the proposal to establish shared regional Audit Committees 4. Support the appointment of an independent member as chair of the Audit Committee to remain at the discretion of each Local Government. 5. Support the payment of meeting fees or defined reimbursements to independent Audit Committee members. |

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| 6.7 Building Upgrade Finance | |
| <ul style="list-style-type: none"> Reforms would allow local governments to provide loans to third parties for specific building improvements - such as cladding, heritage and green energy fixtures. This would allow local governments to lend funds to improve buildings within their district. Limits and checks and balances would be established to ensure that financial risks are proactively managed. | <p><u>Current Local Government Position</u> Item 6.7 aligns with Advocacy Position 2.6.26 - Building Upgrade Finance.</p> <p><i>The Local Government Act 1995 should be amended to enable a Building Upgrade Finance mechanism in Western Australia.</i></p> <p>Comment Building Upgrade Finance would enable Local Governments to guarantee finance for building upgrades for non-residential property owners. In addition to building upgrades to achieve environmental outcomes, Local Governments have identified an opportunity to use this approach to finance general upgrades to increase the commercial appeal of buildings for potential tenants. In this way, BUF is viewed as means to encourage economic investment to meet the challenges of a soft commercial lease market and achieve economic growth.</p> <p><u>Recommendation – Item 6.7</u> Supported</p> |
| 6.8 Cost of Waste Service to be Specified on Rates Notices | |
| <ul style="list-style-type: none"> It is proposed that waste charges are required to be separately shown on rate notices (for all properties which receive a waste service). This would provide transparency and awareness of costs for ratepayers. | <p>Comment This proposed reform will require a relatively simple calculation.</p> <p><u>Recommendation – Item 6.8</u> Supported</p> |

Additional Reform Proposals

In December 2020, WALGA State Council considered the sector's feedback on the discussion paper 'Advocacy Positions for a New Local Government Act: Key Issues from Recent Inquiries into Local Government' (Rec: 142.6/2020).

It is **recommended** that the Local Government Reform Proposals process be conducted in alignment with the following WALGA advocacy position.

Legislative Intent

That the following key principles be embodied in the Local Government Act:

1. Uphold the general competence principle currently embodied in the Local Government Act
2. Provide for a flexible, principles-based legislative framework
3. Promote a size and scale compliance regime
4. Promote enabling legislation that empowers Local Government to carry out activities beneficial to its community taking into consideration Local Governments' role in creating a sustainable and resilient community through:
 - a. Economic development;
 - b. Environmental protection; and
 - c. Social advancement
5. Avoid red tape and 'de-clutter' the extensive regulatory regime that underpins the Local Government Act, and
6. The State Government must not assign legislative responsibilities to Local Governments unless there is provision for resources required to fulfil the responsibilities.

It is **recommended** that the following additional advocacy positions be included in the sector's response:

Rating Exemptions

That an independent review of all rate exemptions be undertaken.

Fees and Charges

That:

1. An independent review be undertaken to remove fees and charges from legislation and regulation; and
2. Local Government be empowered to set fees and charges for Local Government services.

Financial Management and Procurement

That the Local Government sector:

- Supports Local Governments being able to use freehold land to secure debt; and
- Supports the alignment of Local Government procurement thresholds, rules and policies with the State Government.

Disposal of Property Exemption

Regulation 30 (3) of the *Local Government (Functions and General) Regulations 1996* should not include any financial threshold limitation on a disposition where it is used exclusively to purchase other property. The current limit is \$75,000 and this type of activity commonly applies to a trade-in situation.

Tender Exemption General Practitioner Services

That the reform proposals provide for inclusion of a tender exemption for General Practitioner (GP) services under Part 4, Division 2 of the *Local Government (Functions and General) Regulations 1996*, to support Local Governments to secure and retain necessary primary health care services for their communities.

Elector’s Meetings

That WALGA advocate to the Minister for Local Government to amend the *Local Government Act 1995* to provide protections against the misuse of special electors meetings by:

1. prohibiting a matter previously considered being resubmitted; and
2. ensuring that motions to be considered are relevant to Local Government.

Technical Amendment Proposals

WALGA’s Governance and Organisational Service team monitors the Local Government Act and associated regulations for inconsistencies and potential error. The following matters are proposed for inclusion in the reform process.

Part 4 – Elections and other Polls

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| <p>s.4.9 <i>Election day for extraordinary elections</i></p> | <p>Section 4.9(1)(a) provides that the President/Mayor may exercise authority to determine the extraordinary election day, if not already fixed under paragraph (b), with s.4.9(1)(b) stating ‘if a day has not already been fixed under paragraph (a)’</p> <p>Additionally, s.4.17 provides for Council to determine, with approval of the Electoral Commissioner, to allow a vacancy to remain unfilled. This has potential to lead to a further anomaly in the exercise of power under s.4.9(1)(a) and (b).</p> <p><u>Recommend legislative amendment that brings chronological order to the decision-making powers for considering vacancies and determination of extraordinary election day.</u></p> |
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Part 5 – Administration

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| <p>s.5.36(4) & (5A) Admin. r.18A(2) <i>Local government employees</i></p> | <p>Administration Regulations, Schedule.2, clause 6 requires a Local Government to advertise the position of CEO <u>if the position is vacant</u>. Regulations do not, however, prescribe classes of persons under s.5.36(5A). Compliance with Admin.r.18A(2) advertising is unrealistic when a CEO leaves the Local Governments employment with little or no notice period.</p> <p>The WALGA Template Policy for Temporary Employment or Appointment of CEO (s.5.39C), includes protocols for Temporary CEO appointments.</p> <p><u>Recommend regulations be made under s.5.36(5A) prescribing classes of persons as a ‘temporary CEO appointed under short term contract, where the person appointed is NOT an existing employee of the Local Government’.</u></p> |
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| <p>s.5.94</p> <p><i>Public can inspect certain local government information</i></p> | <p>The Act requires public access or inspection rights for documents that contain personal information, i.e. electoral roll, owner / occupier, rate record [s.5.94(m) and (s)]. The Act only limits the right to access this information where the CEO is unable to be satisfied that the information will not be used for a commercial purpose [Admin.r.29B].</p> <p>WALGA members have expressed concern of the risks that may extend to information when combined with other personal information, for example, cyber security / identity theft risks or personal safety risks.</p> <p><u>Recommend there be an analysis of the public benefit versus public risk arising from statutory provisions that requires public disclosure of documents containing personal details (i.e. electoral rolls, rate record) in the context of the potential for this information to be manipulated or misused for improper purposes.</u></p> |
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Local Government (Administration) Regulations 1996

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| <p>Admin.r. 29D</p> <p><i>Period for which information to be kept on official website</i></p> | <p>Requires list of council members and staff positions that provide primary and annual returns to be kept on the website for 5 years. S.5.88(3) requires returns to be removed from the register when a person is no longer relevant. Admin.r.29D is inconsistent with s.5.88(3), meaning that the names and positions will remain on the website despite the returns being removed from the Financial Interests Register.</p> <p><u>Recommend amending Admin.r.29D so that it is consistent with s.5.88(3).</u></p> |
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